mid-day meal on November 1, the second accused arrived on the scene in the company of the appellant. The second accused demanded payment from Low who said, "You better come into my room and get the money." Low then led the way into a room on the ground, and he stated that both the second accused and the appellant followed him. Inside the room he handed the $51 to the second accused, and then made an excuse to go out. In response to his signal the two police constables descended from their hiding place and arrested the two persons stated to be still inside the room. The money was found still in the hands of the second accused.

While there could have been no doubt about the guilt of the second accused, it is equally clear that the mere presence of the appellant on the scene is not *ipso facto* conclusive proof of his participation in the offence. The crucial point which had to be considered was whether, on the occasion of the earlier meeting on October 22, the demand by the second accused was made, not only while the appellant was in the immediate vicinity of the parties to the conversation, but also that it was within the hearing of the appellant, so that the demand was actually known or must have been known by him. Unless it was proved that the appellant had such knowledge he cannot by mere inference be held to have had any guilty knowledge of the purpose of the second accused's subsequent visit to collect the money.

The law is quite clear. In the case of *Gray* [1] Lord Reading C.J. said:

> "It is not necessary that a man, to be guilty of murder, should actually have taken part in a physical act in connection with the crime. If he has participated in the crime — that is to say, if he is a confederate — he is guilty, although he has no hand in striking the fatal blow. Equally it must be borne in mind that the mere fact of standing by when the act is committed is not sufficient. A man, to become amenable to the law, must take such a part in the commission of the crime as must be the result of a concerted design to commit the offence."

In *Wilcox* v. *Jeffery* [2] Lord Goddard cited and followed a *dictum* of Cave J. in *R.* v. *Coney* [3] as follows:

> "Where presence may be entirely accidental, it is not even evidence of aiding and abetting. Where presence is *prima facie* not accidental it is evidence, but no more than evidence, for the jury."

In the present case the learned President's grounds for convicting the appellant are set out in these words:

> "During the first visit of the accused persons to the kongsi when P.W.1 was asked to join their gang and pay money, it was accused No. 2 who spoke, and accused No. 1 was merely present but did not himself speak to P.W.1 to ask him to join the gang or to pay money. But the fact that accused No. 1 appeared again at the kongsi together with accused No. 2 on 1.11.61 and accused No. 1's conduct during this visit clearly showed that he was taking part in the demand for money."

An inference of the appellant's complicity thus appears to have been drawn from his mere presence on the two occasions and certain words he was alleged to have uttered on November 1. In the absence of any finding of fact in the judgment that the appellant heard the demand made and knew of it, on the occasion of the first visit, his presence then and on the subsequent occasion might have been quite accidental and therefore equally consistent with his innocence as with his guilt. It then falls for the Court to consider whether the appellant's conduct on the latter occasion was such as to show that he was taking part in the demand. This in fact consisted only of a cryptic remark alleged by Low to have been made by the appellant after the $51 was handed to the second accused: "Give the name, not the correct one, but the fictitious one." In a small hut where other remarks exchanged were said to have been heard by both the police witnesses hidden in the loft, one would have expected that they would be able to corroborate the only bit of evidence tending to show the appellant's complicity in the offence. Neither of them did so. On the contrary, their evidence of conversation in the Malay language between the second accused and Low must be regarded as materially conflicting with Low's own evidence. He never mentioned any use of Malay. After careful consideration of the whole of the evidence, I am bound to say that I entertain very grave doubts about the guilt of the appellant. I therefore allow the appeal and set aside the conviction and sentence.

Appeal allowed.

HO NYUK CHIN & ANOR. v. LEONG CHEN SEONG & ORS.

[O.C.J. (Azmi J.) July 14, 1962]

[Ipoh — Originating Summons No. 182 of 1961]

Will — Construction — "Permit to occupy" premises free of rent — Subletting of premises — Whether permittee entitled to rents collected or whether rents form part of estate — Whether permittee has use of premises with right to rent out or whether permission is a licence.

The 1st defendant and two others were executors and trustees of the will of one M.L.K. who by clause 8(6) of his will provided: "Until the time fixed for the distribution of my estate I direct my trustees to carry out the following directions: (6) To permit the said Leong Chen Seong and the said Yoon Chin Phin as well as my wife, Ng Soon Hin to occupy Premises No. 11, Brewster Road, Ipoh, free of payment of any rent and also to pay them for the maintenance and upkeep of their family residing at the said premises monthly the sum of $500 which shall include the payment of school expenses and the employment of servants." At some time or other one or all of the defendants sub-let the front ground portion of the said premises at a rental of $100 per month.

This application sought to determine whether (i) Leong Chen Seong, Ng Soon Hin and Yoon Chin Phin, three of the defendants should be entitled to the rents collected or that the same should form part of the estate; (ii) under clause 8(6) of the said will the defendants could use the house with the right to rent out part of it and retain the rest for themselves, or whether they were licensees.

Held: (1) having regard to the words used, i.e. "permit to occupy" and that they were to occupy for only two years, all that was given to the dependants was a mere licence to live in the house;

(2) in the circumstances all rents collected by them, and any future rents are payable to the receiver in the estate.

Cases referred to:—

(1) *Re Hadjee Yusof* [1961] M.L.J. at p. 267.
(2) *Rabbeth* v. *Squite* 45 E.R. 157.
(3) *Mannox* v. *Greener* L.R. 14 Eq. 456.
(4) *Re Gibbons* [1920] 1 Ch. 372.
(5) *Maclaren* v. *Stanton* (1858) 27 L.J. Ch. 442.
(6) *Re Anderson* [1920] 1 Ch. 175.
(7) *May* v. *May* 44 L.T. 412.
(8) *Grey* v. *Pearson* 6 H.L. Cas. 61.

ORIGINATING SUMMONS.

Lim Kean Chye for the plaintiffs.

W. E. Balasingam for the defendants.

Cur. Adv. Vult.

Azmi J.: This is an application by the plaintiffs that the 1st defendant (Leong Chen Seong), the 4th defendant (Ng Soon Hin (f)), and the 6th defendant (Yoon Chin Phin (f)) or any of them may be ordered to pay Ng Koon Mee, the receiver herein, four days after service the sum of $300 being the rents of the sub-let front ground portion of premises, No. 11, Brewster Road, Ipoh, for the months of November and December, 1961, and January, 1962, and subsequent rents on or before the 15th day of each month in which payment of such rent is due. The 1st defendant and two other persons, who are the sons of the deceased, Me Leong Kin, were appointed under his will dated the 26th February, 1953, executors and trustees of the said will. Clause 8(6) of the will provides as follows:—

"8. Until the time fixed for the distribution of my estate I direct my trustees to carry out the following directions:

x x x

(6) To permit the said Leong Chen Seong and the said Yoon Chin Phin as well as my wife, Ng Soon Hin to occupy Premises No. 11, Brewster Road, Ipoh, free of payment of any rent and also to pay them for the maintenance and upkeep of their family residing at the said premises monthly the sum of $500 which shall include the payment of school expenses and the employment of servants."

Under the same will the testator also made similar provisions for the occupation of other premises by his two other widows and their children. Under clause 9 of the will the testator gave the following directions:—

"9. I devise and bequeath all the rest of my movable and immovable property whatsoever and wheresoever situate unto my trustees to hold the same in trust until 2 years after my death and then to divide and distribute the same in the manner and amongst the persons following: . . . . . ."

Thereafter follows the recitals of various payments of cash to various sons and daughters and widows of the deceased.

It is not disputed that at some time or other one or all of the said defendants sub-let the front ground portion of the said premises to an architect by the name of Lai at a rental of $100 a month.

On the 17th July, 1961, Mr. Ng Koon Mee, an accountant, was appointed receiver by this Court. In his affidavit dated the 21st February, 1962, Mr. Ng Koon Mee stated that he had received the rent of the said portion of the premises for the month of October, 1961, but thereafter the architect, who rented the house, refused to pay him any further.

On the 28th November, 1961, the solicitor for the 1st defendant demanded that the said $100 be refunded to the defendants.

This application is, therefore, made to me to decide as to whether the said three defendants should be entitled to the rents collected or that the same should form part of the estate and for that purpose to construe from clause 8(6) as to whether the defendants have the use of the house with the right to rent out part of it and retain the rent for themselves, or whether all that is given to them is a licence to live in the house rent free when they are so minded.

Mr. Lim, for the plaintiffs, cited to me the case of *Re Hadjee Yusof* (1). In that case the testator under his will devised certain premises in Singapore to his trustees upon trust to permit his son and his wife and children "to reside therein and use the said effects and things free of rent until the date of distribution." The said son, Mohamed, who was occupying the premises intended to rent part of the premises to another and when the other beneficiaries protested against this he applied to the Court for direction, and the Court held that this was a gift of a right personally to reside in the said house but did not carry with it the right to make any profit.

The following cases, which were referred to in the judgment of Chua J. were also cited to me: *Rabbeth* v. *Squite* (2), where the words used were "the use and occupation"; *Mannox* v. *Greener* (3), where the words used were "free occupation of any house in my possession"; *Re Gibbons* (4), where the words used were "occupying and enjoying the use" of the house; *Maclaren* v. *Stanton* (5), where the words used were "the use and enjoyment of" the house; *Re Anderson* (6), where the words used were "to use and occupy" his residence "for her own personal use and occupation"; *May* v. *May* (7), where the words used were "may reside rent free in my present residence during her life".

It might be noted that in all the cases cited above the gift was for the life-time of the donee. In the first three cases, it was held by the Courts that the donees had the right of renting out the premises and retaining the rents. On the other hand, in the last three cases, it was held that personal occupation was intended with the result that the donees could not retain the rents for themselves. Lord Wernsleydale at page 108 of *Grey* v. *Pearson* (8), had said:—

"We are bound by decided cases for the sake of securing as much certainty in the administration of the law as the subject is capable. But when the decision is not upon some rule or principle of law but upon the meaning of words in instruments which differ so much

from each other and when the proper construction is so varied by the peculiar circumstances of each case it seldom happens that the words of one will are a sure guide for the construction of words resembling them of another."

In the present case, the will stated that the trustees were to *permit* the said defendants to *occupy* the premises. It was also apparent from clause 9 that it was the intention of the testator that the trustees were to hold the property in trust only for two years at the end of which they were to divide and distribute the same.

I would, having regard to the words used, namely, "permit to occupy" and that they were to occupy for only two years, come to the view that all that is given to the defendants is a mere licence to live in the house.

In the circumstances, there shall be an order directing the defendants to pay to the receiver all rents collected and that any future rents be paid to him in terms of the summons.

Costs of this application, as between solicitor and client, to be paid out of the estate.

Order accordingly.

Solicitors: *Das & Co.; Gibb & Co.*

LEE BENG CHOON v. TAN NGIAP KEE

[O. C. J. (Ong J.) June 8, 1962]

[K.L. — Civil Suit No. 13 of 1961]

Estoppel — Sale of car to plaintiff — Fraudulent representation by purported agent of defendant — Car owned by hire-purchase company — Whether plaintiff was dealing with fraudulent agent on the footing of a principal — Whether plaintiff entitled to relief — Whether estopped from denying title of plaintiff.

Sale of goods — Motor car — Registration book and signed transfer form — Whether document of title.

The plaintiff was induced by the fraud of one C (who represented himself as the duly authorised agent of the defendant) to purchase a car in the belief that the car belonged to the defendant, when in fact the owners of the car were a hire-purchase finance company. The plaintiff now claimed the sum of $4,850 and general damages for loss sustained as a result of fraudulent misrepresentation made by C; in the alternative for breach of contract in that the sale implied a warranty of the defendant's title to the vehicle in question. It was contended for the plaintiff: (i) the defendant had held out C as his duly authorised agent because he had allowed C to have possession of the car, its registration card and a blank transfer form with the defendant's signature thereon and (ii) the defendant should be precluded from denying that the purported sale was within the apparent scope of C's authority.

Held: (1) the mere fact of the defendant leaving the car, its registration book and or signed notice of change of possession of a motor vehicle in C's possession did not amount to a representation that defendant was the owner;

(2) no representation by an agent as to the extent of his authority can amount to an holding out by the principal;

(3) as the plaintiff paid C without attempting to satisfy himself whether C had authority to receive payments and the plaintiff by setting off a debt owing by C to him from the purchase price, he must be held bound by his own act in dealing with C otherwise than as the defendant's agent.

Cases referred to:—

(1) *Joblin* v. *Watkins & Roseveare (Motors) Ltd.* [1949] 1 All E.R. 47.

(2) *Central Newbury Car Auctions Ltd.* v. *Unity Finance Ltd.* [1956] 3 All E.R. 905, 920.

(3) *Attorney-General for Ceylon* v. *A.D. Silva* [1953] A.C. 461, 479.

(4) *Butwick* v. *Grant* [1924] 2 K.B. 483.

(5) *Russell* v. *Bangley* 106 E.R. 982, 983.

(6) *Tan Ah Boon* v. *State of Johore* [1936] M.L.J. 187.

(7) *Du Jardin* v. *Beadman Bros. Ltd.* [1952] 2 All E.R. 160.

CIVIL SUIT.

M. S. Chooi for the plaintiff.

Y. S. Lee for the defendant.

Cur. Adv. Vult.

Ong J.: The plaintiff, misplacing his trust in a motor-car salesman, was induced by the fraud of the other to purchase a car in the belief that it was the defendant's property and that the salesman was the defendant's agent for sale. The legal owners were in fact a hire-purchase finance company. The question is whether the plaintiff is entitled to any relief against the defendant.

In the plaintiff's statement of claim it was alleged that on October 29, 1959 the defendant through his agent, one Chua Kim Leng, sold a motor-car No. BE. 8088 to the plaintiff for the sum of $4,850; that on November 19, 1959 the plaintiff resold this car to a Malay purchaser for the same price; and that on November 26, 1960 a finance company, Lombard Acceptance (Malaya) Ltd., as owners of the car, seized it for non-payment of hire due under a hire-purchase agreement made on September 19, 1959 between the company and the defendant. As a result the plaintiff had to indemnify the Malay purchaser to the extent of $4,850 for his loss. The plaintiff now claims from the defendant the sum of $4,850 and general damages for loss sustained as a result of fraudulent misrepresentation made to the plaintiff by Chua acting as agent of the defendant; in the alternative, for breach of contract in that the sale implied a warranty of the defendant's title to the vehicle in question.

In his defence the defendant stated that on September 19, 1959 Chua had requested him to allow or lend his name to be used for that of Chua in a hire-purchase agreement with the finance company for the purchase of a new Morris Minor which Chua felt embarrassed in buying in his own name by reason of his being the sales supervisor of the East Asiatic Company who were the sole agents and distributors for Fiat cars. As Chua promised to be responsible for all payments under the agreement the defendant accepted the explanation and signed the agreement as requested. Subsequently Chua told the defendant that he had settled with the finance